* **HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) No.1292/2002

Judgment reserved on : 7th September,2007
Date of decision : 1st October, 2007

Sanjay Mishra

..... PLAINTIFF

! Through : Mr.S.B.Sinha with
Mr.Hameed Shaikh, Advocates

Versus

$ Shri Ashwani Kumar Gandhi & Anr.

..... DEFENDANTS

^ Through : Proxy counsel for defendant.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

ARUNA SURESH, J.

Plaintiff filed the present suit under Order 37 of the Code of Civil Procedure for recovery of Rs.36,92,300/- claiming to be the liquidated sum on the basis of contract i.e. Agreement to sell dated 9.12.2000 in respect of property bearing No.11/105 Subhash Nagar, Delhi. The plaintiff had paid earnest money of Rs.3,21,000/- and also paid an advance of Rs.22,00,000/- to the defendants on different dates. On

persistent refusal of the defendants to show the title documents, the plaintiff was forced to sign another agreement in order to get his amount which he had already paid to the defendants. The original consideration was reduced by Rs.2.25 lacs in the subsequent agreement dated 13.9.2001. Since plaintiff found the defendants had defrauded him by fabricating false documents in order to get the property converted from leasehold to freehold, he demanded back his money given for the purchase of the property to which the defendants agreed and sought three months time to refund the same. Since defendants failed to return back the money, plaintiff lodged First Information Report being FIR No.301/2002 under Sections 420 and 120(b) IPC against the defendant and filed the present suit for recovery of Rs.26,01,000/- the amount paid as advance and the earnest money. Plaintiff also claimed interest at the rate of 24% amounting to Rs.7,70,300/- and Rs.3,21,000/- double the earnest money, in all a total sum of Rs.36,92,300/-.

2. Defendants contested this suit and filed an application for leave to defend. Vide detailed judgment dated 2.5.2006 the Court was pleased to decree the suit of the plaintiff for total sum of Rs.29,22,000/- with interest

pendente lite and future at the rate of 9% p.a. However, defendants were granted unconditional leave to defend and contest the suit of the plaintiff for a sum of Rs.7,70,300/-, the amount of interest claimed by the plaintiff against the defendants at the rate of 24% p.a. till the filing of the suit.

3. In view of this judgment dated 2.5.2006 following issue was framed for trial:-

> 1. Whether the plaintiff is entitled to recover interest @ 24% p.a. amounting to Rs.7,70,300/- or at any other rate till the filing of the suit?

4. Since the claim of interest did not arise out of any contract and it is a legal issue, the arguments have been heard on this issue as there was no need to deal with any oral evidence.

5. I have heard learned counsel for both the parties and have carefully perused the record. Agreement to sell dated 9.12.2000 and the subsequent agreement dated 13.9.2001 do not stipulate any interest clause. In case the defendants failed to perform their part of the contract, plaintiff was entitled to claim double the amount of earnest money of Rs.3,21,000/- i.e. In all a sum of Rs.6,42,000/-. While decreeing the suit the Court awarded pendente lite and

future interest at the rate of 9% p.a.

6. Though there is no stipulation for payment of interest on double the amount of earnest money to meet the interest of justice, in my view the plaintiff is entitled to claim interest on the amount so claimed by him till the filing of the suit. I am supported in my view by the following judgments.

7. In (2000) 7 SCC 379 **Surjit Kaur Vs. Naurata Singh & Anr.** where the agreement to sell contained the following clause: “Due to any reason, if I don't get sale deed executed then purchaser can get it done through court of law or he can claim double the advance amount paid to me.” In the said case the earnest money paid was Rs.20,000/-. The plaintiff in the said case was entitled to a sum of Rs.40,000/- being double the advance amount paid by him. While granting the said amount of Rs.40,000/-, interest at the rate of 12% p.a. was also awarded on the said amount of Rs.40,000/- from the date when the sale deed was to be executed till payment.

8. In RFA No.584/2002, Harbans Lal Vs. Daulat Ram under similar circumstances the Division Bench of this court in its judgment dated 6th December, 2006 was pleased to

award interest at the rate of 6% per annum with effect from the date when the sale had is to be completed till the filing of the suit besides interest pendente lite and future interest.

9. Keeping in mind the rate of interest awarded to the plaintiff during the pendency of the suit till realisation of the decree, since there is no agreement to pay interest, I am of the view that plaintiff is also entitled to interest at the rate of 9% p.a. on the earnest money of Rs.3,21,000/- from 9.12.2000 till the filing of the suit i.e. 9.8.2002. This issue is accordingly decided in favour of the plaintiff and against the defendants. Decree be prepared accordingly. File be consigned.

OCTOBER 1, 2007 **ARUNA SURESH**
San. **(JUDGE)**